

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Clayton E. Bunting, Esquire
P.O. Box 690
Georgetown, DE 19947

Jeffrey A. Young, Esquire
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Re: ***Jones v. Clifton***
C.A. No. S10C-12-012 RFS

Upon Defendant's Motion for Summary Judgment. Denied.

Submitted: August 18, 2011
Decided: September 26, 2011

Dear Counsel:

In this case the Plaintiffs have sued to recover damages from an automobile accident. The accident occurred on February 2, 2009 near Millsboro, Sussex County, Delaware. After stopping, the Defendant drove a vehicle eastbound over two lanes of southbound traffic on U.S. Route 113, and he crossed over a median into the two northbound lanes. Defendant struck Plaintiffs' vehicle that was driving properly northward in the right lane.

Defendant admits negligence for failure to yield the right of way. Defendant requests summary judgment be entered to preclude a punitive damage award. Of course, summary judgment may only be granted where there are no material issues of fact, and the movant is, therefore, entitled to judgment as a matter of law.

In this context, the record must be reviewed in favor of Plaintiff, the non-moving party, understanding that the jury decides contested fact questions. In the argument, the parties have presented deposition testimony by Defendant, Plaintiff, and an affidavit submitted by an eyewitness, who was jogging near the accident.

The eyewitness observed Defendant go through the crossover through the northbound lanes of traffic without stopping or braking. Defendant pled guilty to failure to yield the right of way. Route 113 is a major four lane highway. The speed limit is 55 mph. The Defendant saw traffic stopped at a light south on Route 113 but did not observe Plaintiffs' vehicle.

A jury could conclude that Defendant's conduct was wanton and reckless and reflected an indifferent disregard for the safety of others. Defendant proceeded into the northbound lanes of a major artery, traffic in the area was driven at 55 mph or more. The speed was potentially lethal should collisions occur. The Defendant knew or should have known that unreasonable driving posed immediate risks of serious injury or death. *See Zonich v. Wilson*, 1982 WL 591804 (Del. Super.); *Green v. Millsboro Fire Co., Inc.*, 385 A.2d 1135 (Del. Super. 1978), *aff'd* 403 A.2d 286 (Del. 1979).

Consequently, summary judgment cannot be entered.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary